Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1140

In re DON YOUNG, BETTY YOUNG, JOHN EDMONSON, BARBARA EDMONSON, BOBBY McKEE, BARBARA McKEE, DON SPARKS and GWYN SPARKS,

Petitioners,

UNITED STATES OF AMERICA,

Plaintiff-Respondents,

v.

MIDLAND INDEPENDENT SCHOOL DISTRICT and JAMES H. MAILEY, SUPERINTENDENT,

Defendants.

REPLY BRIEF

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February 17, 1977

IN THE

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The government's answer says a writ of mandamus is improper where (a) the petitioning parents were not allowed to become parties in the trial court, or (b) the present complainant (i.e. the United States) was not a party to the first case. Neither argument is meritorious under the decisions of this Court.

To avoid laboring the obvious, petitioners of course acknowledge that mandamus is inappropriate where alternative methods of raising the issue – as by appeal – are available, that mandamus is reserved for issues of exceptional importance and is discretionary. Having in mind that the ground for this petition is that there was a total lack of federal jurisdiction in the lower court, the present application is directly in point on each of these grounds.

1. As the government points out, these petitioners have been refused the opportunity to litigate the issue of jurisdiction in the trial court, their petition for intervention having been denied. They have no right of appeal, any review being entirely discretionary. In short, the suggested alternative is a "clearly inadequate remedy" within the terms of *Ex parte Fahey*, 332 U.S. 258 (1947).

2. Petitioners submit that the existence or non-existence of federal court jurisdiction under our dual system – particularly in cases dealing with school desegregation – is a matter of exceptional importance. *Wheeler v. Durham County Bd. of Ed.*, 521 F.2d 1136, 1140-1 (4 Cir. 1975). On the record, any continued existence of this case is improper in that it exceeds "the lawful exercise of [the Court's] prescribed jurisdiction." *Rocke* v. *Evaporated Milk Assn*, 319 U.S. 21, 26 (1943).

And if that is so, then the orders, decrees and judgments which may be issued either on trial or appeal are void, whether or not they adopt current methods of handling segregation cases which did properly come before the courts. The orthodoxy of an order is not a justification for its issuance.

Moreover, the statute grants no other or different jurisdicational basis for an action brought by the United

States in lieu of an individual or class and the government's argument that it was not a party to the first suit appears to be without legal significance.

3. As to the exercise of this Court's discretion in hearing the case, petitioners urge that it be granted in their favor. More and more school systems in this country will achieve the unitary status which this Court has set as the ultimate constitutional goal. The record here is direct and the issue of jurisdiction is clearly presented. If any step is to be taken to ultimately free the federal courts from continuing supervision over the school systems of the country, this is a clear opportunity to fix the terminal limits of that jurisdiction.

/s/ George S. Leonard

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